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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**Jesus Ernesto Loreto, Jr.,**

**Defendant.**

**CR 05-1406-TUC-FRZ (JM)**

**GOVERNMENT'S OBJECTIONS  
 TO THE PRESENTENCE  
 REPORT**

The United States of America, by and through undersigned counsel, hereby objects to the following paragraphs of the initial presentence report prepared in this matter.

1. Objection 1 In Part E of the PSR the probation officer argues that departure pursuant to U.S.S.G. § 5K2.0 may be warranted because the Guidelines do not take into consideration the chance that a drug might be imported for personal use instead of distribution. This argument is incorrect.

Congress intended that possession for personal use be punished differently than possession for distribution. Congress therefore enacted one statute for personal use possession (Title 21, U.S.C. Section 844) and another for possession with intent to distribute (Title 21, U.S.C. Section 841). Recognizing this distinction, the sentencing commission promulgated one Guideline for simple possession (U.S.S. G. § 2D2.1)

1 and another for possession with intent to distribute (U.S.S.G. § 2D1.1).

2 Congress recognized no distinction between importation of a substance for personal use  
3 and importation for distribution. One statute applies to both (21 U.S.C. Section 960). The  
4 Sentencing Commission understood that no distinction was to be made and decided to punish  
5 all importation in the same manner that possession with intent to distribute was punished.

6 In fact U.S.S.G. § 2D1.1 Background provides in relevant part “Offenses under 21 U.S.C.  
7 §§ 841 and 960 receive identical punishment. . . “.

8 Cases cited by the defense are not on point because they concern possession with intent to  
9 distribute violations and not importation violations.

10 The defendant’s argument that Loreto “shopped” in Mexico for personal use  
11 methamphetamine is meritless. To begin with, a user in the United States would only increase  
12 his chances of being arrested if he were to import drugs across the border instead of buying  
13 them in the United States.

14 Also, the extreme purity of the methamphetamine (98%) suggests strongly that it was  
15 possessed for distribution. See U.S. v Tebha, 770 F.2d 1454, 1456 (9<sup>th</sup> Cir.1985) (fact that  
16 heroin was 95-96% pure could help jury conclude the defendant was a major drug supplier).

17 Conclusion The defendant should be denied a U.S.S.G. § 5K2.0 departure.

18 RESPECTFULLY SUBMITTED this 20th day of April, 2006.

19 PAUL K. CHARLTON  
20 United States Attorney  
District of Arizona

21 *s/Jesse J. Figueroa*

22 Jesse J. Figueroa  
23 Assistant U.S. Attorney  
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1 COPY of the foregoing served  
electronically or by other means  
2 this 20<sup>th</sup> day of April, 2006, to:

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